IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.9.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Writ Petition No.17826 of 2006

(O.A.No.2461/1994)

M.Swaminathan .. . Petitioner

Vs.

1.The District Revenue Officer,
Thanjavur.
2.The Revenue Divisional Officer,
Kumbakonam.
3.The Tahsildar,
Papanasam Taulk.
4.S.Ravichandran
... Respondents

This petition came to be numbered by transfer of O.A.No.2461 of 1994 on the file of the Tamil Nadu State Administrative Tribunal, Chennai praying for the issuance of a Writ of Certiorari, to call for the records and set aside the order passed by the Ist respondent in ref.RC.No.59801/93/E1 dated 23.9.1993 confirming the order of the 2nd respondent in ref.No.Rc.No.10043/91/A1 dated 10.6.1993 and set aside the same.

For petitioner : Mr.Gurulingam
For respondents : Mrs.Bhavani Subburayan

Addl. Government Pleader

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O R D E R

The petitioner challenged the order of the District Revenue Officer, Thanjavur, dated 23.9.1993 confirming the order of the Revenue Divisional Officer, Kumbakonam, dated 10.6.1993.

2.The facts relating to this petition are as follows:

It is the case of the petitioner that he is a permanent resident of Umayalpuram Village, within the jurisdiction of the

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Papanasam Taluk. The Tahsildar, Papanasam Taluk, by his proceedings dated 30.6.1991, called for applications for the post of Village Menial to be filled on account of the retirement of one Thangayyan. Twenty three Applications were received to the said post and the petitioner came out successful and the Tahsildar, Papanasam Taluk third respondent herein, in his order under ref.Rc.No.8333/91/A9 dated 23.7.1991 appointed the petitioner as Village Menial. Aggrieved by the said order, the 4th respondent filed an appeal before the Revenue Divisional Officer, Kumbakonam, who set aside the order of appointment of the petitioner as Village Menial, passed by the Tahsildar, on 10.6.1993. Against which, the petitioner filed a Revision before the District Revenue Officer, Thanjavur District, third respondent herein which was dismissed on 23.9.1993, confirming the order of the 2nd respondent, dated 10.6.1993. Challenging the orders of the first and second respondent, the petitioner filed an Original Application before the Tamil Nadu State Administrative Tribunal, which was subsequently transferred to this court and re-numbered as W.P.No.17826 of 2006.

3. The 4th respondent, in his counter affidavit has submitted that a criminal case was pending against the petitioner, at the time of his appointment and that the District Revenue Officer in the personal enquiry, after careful consideration of the records, negatived the claim of the petitioner. It is further case of the 4th respondent that since the petitioner was involved in the criminal case, he is not entitled to be appointed in Government service as Village Menial. He has further submitted that the allegation made in the FIR against the petitioner is serious in nature, that he cut the victim with aruval and therefore, the subsequent withdrawal of the criminal case by the Government, does not amount to acquittal.

4.Learned counsel for the petitioner submitted that the petitioner belonged to Most Backward community and he was aged about 35 years, at the time of his appointment and that it is very difficult for him, to seek employment in Government, other than the above said post. Learned counsel for the petitioner further submitted that though a criminal case was filed against the petitioner by the Sub-inspector of Police, Kabisthalam in crime No.298 of 1991 and taken on file in C.C.No.1188 of 1991, on the file of the Judicial Magistrate, Papanasam, it was withdrawn later on by the prosecution and therefore, the second respondent ought to have considered the petitioner for appointment as Village Menial. He further submitted that there was no necessity for the petitioner to disclose the pendency of criminal proceedings at the time of appointment and therefore, non-discloser of the same cannot be put against the petitioner and it does not disqualify the petitioner for appointment as Village menial.

5.Before adverting to the facts of the case, the relevant qualifications as prescribed for the post of Village Assistant under Rule 5 of the Tamil Nadu Village Servant Act 1985 are extracted as below:

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"5 Qualification:-

(1)No person shall be eligible for appointment to the post of a Village Servant unless he possesses the qualification, specified below, namely:-

(i)knowledge to read and write Tamil; and

(ii)knows cycling and is physically fit.

(2)The appointing authority shall also take into consideration the following factors, namely:-

(i)whether the applicant is resident of the charge village;

(ii)whether the applicant is a person belonging to one of the communities included in the list of Backward Classes recognised by the Government of Tamil Nadu;

(iii)whether the applicant is a person belonging to Schedule Castes/Schedule Tribes; and

(iv)whether the applicant is an ex-serviceman.

(3)In making appointments under these rules, the appointing authority shall take into consideration the character and antecedents of the applicants."

6.Therefore while assessing the comparitive merits of the candidates for the post of Village Assistant, as per Rule 5(3) of the Tamil Nadu Village Servants Service Rules 1980, the appointing authority, Tahsildar has to take into consideration the character and conduct of the contestants. In the case on hand the petitioner, was involved in a criminal case in C.C.No.298 of 1991 under Sections 147,148 and 324 IPC. for which he was arrested by the police and detained in Central Prison for three days. It is not in dispute that at the time of appointment, the petitioner was involved in a criminal case. For appointment to a post in Government service, the appointing authority has to necessarily verify the character and conduct of the aspirant. When the petitioner was appointed to the post of Village menianl,the Tahsildar, Papanasam Taluk , had no knowledge about the pendency of the criminal proceedings against the petitioner, but during enquiry when the petitioner himself has admitted the pendency of the criminal proceedings, the Revenue Divisional Officer, Kumbakonam has rightly cancelled the appointment. As stated supra while making appointment as per Rule 5(3) of the Tamil Nadu Village Servants Service Rules, 1980, the appointing authority has to take into consideration, the character and antecedents of the applicants. Considering the admitted fact that at the time of appointment, criminal proceedings were pending against the

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petitioner, he was not at all eligible to be considered for appointment to the Government service on the day when he had applied for. The subsequent withdrawal of prosecution would not make him qualified retrospectively. It is settled legal position that a person has to satisfy the necessary qualifications on the date of applying for the post and not at a later point of time.

7.Therefore I do not find any irregularity or illegality in the impugned order. In the result writ petition is dismissed. No costs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Revenue Officer,
Thanjavur.

2.The Revenue Divisional Officer,
Kumbakonam.

3.The Tahsildar,
Papanasam Taulk.

+1 cc to Mr.C.Gurulingam, Advocate, SR.No.57426.

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